

TEXT OF PROPOSED REGULATIONS

In the following, underlining indicates additional added text, and ~~striketrough~~ indicates deleted text.

Section 3041.3 is amended to read:

3041.3. Inmate/Parolee Access to Computers

(a) Inmates shall not access any computer outside of their authorized work, vocational, or educational assignment, or as needed for legal research on the Law Library Electronic Delivery System, except as authorized by the department's ~~I~~information ~~S~~security ~~O~~fficer (ISO).

(b) Inmates shall not access any computer connected to a local area network (LAN), except as approved by the ISO; nor shall inmates access any computer which has any type of direct, outside communication capability, except as provided in section 3370(b).

(c) Only those computer programs developed by inmates that are written in a programming language approved by the ISO shall be authorized for use.

(1) The use of inmates as programmers and system experts shall be prohibited where there is a risk to the information assets of the department or the public, as determined by the institution head or the ISO. Inmates shall not be used as programmers or system experts for departmental business applications, systems, and data.

(2) Inmates assigned to one computer for work, vocation or education shall not be assigned to, or permitted to use, any other computer, except as approved by the ISO.

(d) Areas where inmates are authorized to work on computers shall be posted as such. Each computer in a facility shall be labeled to indicate whether or not inmates are authorized access is ~~authorized~~ to it.

(e) Inmates shall not access any computer that contains or is capable of accessing sensitive or confidential information or is connected to other computers containing sensitive or confidential information, except as provided in section 3370(b).

(f) Inmates shall not use or be informed of any computer password, except when issued by the supervising staff. The supervising staff must always retain the ability to change the password, not the inmate. ~~Passwords shall be set only by the supervising staff.~~

(g) Inmates shall not have access to diskettes or any other electronic storage media, except within an area approved by the institution head.

(h) Inmates shall not possess a computer as part of their personal property.

(i) Inmates shall not access or use any computer-based tool or program that is capable of destroying or corrupting stored data, except as provided in sections 3041.3(m) and 3370(c).

(j) Inmates who have a record of computer fraud or abuse shall not have access to a computer, except as approved by the ISO or as needed for legal research on the Law Library Electronic Delivery System.

(k) No external communication capabilities; e.g., telephone lines with connectivity outside the inmate facility, data lines, data patch panels, or telephone access punch panels, shall be permitted in any area where inmates are allowed to access computers, except as approved in writing by the ISO. The local Information Security Coordinator must keep a copy of the written exception on file for post audit.

(l) Inmates shall not directly access or alter any computer's operating system, except as provided in sections 3041.3(m) and 3370(b), or authorized by the ISO.

(m) Inmate refurbishing of computers shall be permitted only as part of a program that has been approved, and subject to all requirements established, by the institution head and ISO. An unclothed body search shall be conducted on each inmate prior to their exiting any area where a computer refurbishing program exists.

(n) Each parole office shall ensure the security of computers, LANs, and modems or other communication devices used in that office from unauthorized access by parolees. The Administrator of each parole office shall be responsible for enforcement of this subsection.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 502, 502.7 and 2702, Penal Code.

Section 3122 is amended to read:

3122. Inmate Law Library.

(a) Each facility shall provide legal materials through its law library to provide inmates with meaningful access to the courts. ~~Inmates with established court deadlines shall be given higher priority to access law library resources than those with longer deadlines or without a deadline.~~

(b) Inmates who have established court deadlines may apply for Priority Legal User (PLU) status to the prison law libraries. Inmates who are granted PLU status based on their application shall receive higher priority to prison law library resources than other inmates. All inmates who are not on PLU status are on General Legal User (GLU) status.

(1) An established court deadline may be either a court imposed deadline for an active case or a statutory deadline. Inmates who apply for PLU status based on a court imposed deadline must show documentation from the court to verify that deadline. Inmates who apply for PLU status based on a statutory deadline must identify the legal rule that compels the deadline.

(2) An inmate who is represented by an attorney for a case shall not be eligible for PLU status for any established court deadline pertaining to that case. An inmate with attorney representation for the established court deadline shall be entitled to GLU status only.

(3) PLU status shall be reserved for inmates who have established court deadlines pertaining to one of the following legal actions:

(A) A petition for writ of habeas corpus.

(B) An appeal of a criminal conviction.

(C) A state or federal action concerning prison conditions.

(D) A petition for certiorari concerning criminal conviction.

For any other legal purposes, inmates may use the law library resources on GLU status.

(4) Inmates shall complete and sign a CDCR Form 2171 (10/08), Priority Library User (PLU) Request and Declaration, which is incorporated by reference, to apply for PLU status. The form shall include a line for inmates to designate their established court deadlines. The form shall also include check boxes for inmates to confirm that they do not have attorney representation for their listed deadline and that their listed deadline pertains to a legal action described in subsection 3122(b)(3).

(5) Except under extraordinary circumstances beyond staff control, law library staff shall have seven calendar days to process an inmate's application for PLU status and make a decision to approve or disapprove the application. Staff members who disapprove an inmate's application shall provide the reasons for their disapproval on the form and shall provide a copy of that document to the inmate.

(6) An inmate who is found to have provided false information on his or her application for PLU status shall be guilty of an administrative rule violation and shall not be able to obtain PLU status based on that application.

(7) An inmate may receive PLU status within 30 calendar days of his or her established court deadline unless the inmate can demonstrate need for a longer period of PLU status based on extraordinary circumstances beyond the inmate's control.

(8) PLU status is intended to assist inmates to do legal work in a quiet law library setting. An inmate on PLU status who, while in the law library, is observed by staff to act in an unreasonably disruptive manner or to engage in non-legal work shall be removed from the PLU list and shall be dismissed from the library for that day. Inmates who are removed from the PLU list for these reasons shall be ineligible to reapply for PLU status for 30 calendar days, but may continue to use the law library on GLU status.

(c) Inmates may not in any way trade, transfer, or delegate their PLU status to other inmates. An inmate who assists another inmate in the preparation of legal documents, as described in section 3163, may not use the PLU status of the inmate being assisted.

(bd) An inmate in a facility without a law library who requests access to such resources shall be transferred to a facility of departmental choosing with a law library for the period of time needed to complete legal work.

NOTE: Authority cited: Section 5058, Penal Code. Reference: section 5054, Penal Code; *Gilmore v. Lynch*, 319 F.Supp. 105 (N.D. Cal. 1970); *Toussaint v. McCarthy*, 801 F.2d 1080 (9th Cir. 1986); *Toussaint v. McCarthy*, USDC N.D. Cal. No. C 73-1422 SAW, First Special Report of the Monitor, August 19, 1987; *Toussaint v. Rowland*, USDC N.D. Cal. No. C 73-1422 SAW, Second Special Report of the Monitor, June 30, 1988; *Zatko v. Rowland*, 835 F.Supp. 1174 (N.D. Cal. 1993); *Lewis v. Casey*, 518 U.S. 343 (1996).

Section 3123 is adopted to read:

3123. Access to Law Libraries

(a) Physical law library access means physical entry into a facility law library for the purpose of using its legal resources. A facility law library includes, but is not limited to, a print law library or the Electronic Law Library Delivery System with any necessary print supplements.

(b) All inmates, regardless of their classification or housing status, shall be entitled to physical law library access that is sufficient to provide meaningful access to the courts. Inmates on PLU status may receive a minimum of 4 hours per calendar week of requested physical law library access, as resources are available, and shall be given higher priority to the law library resources than other inmates. Inmates on GLU status may receive a minimum of 2 hours per calendar week of requested physical law library access, as resources are available.

(c) When unable to physically access the law library, an inmate may request access to legal material through delivery of those materials to the inmate by library staff. This process is referred to as law library paging. An inmate shall not be limited to law library paging for access to legal materials except under extraordinary circumstances including, but not limited to, the following:

(1) The inmate is directly under a prison lockdown.

(2) The inmate is under restricted movement due to his or her medical status.

(3) The inmate has been suspended from physical access to the law library pending investigation of a serious rule violation.

(d) Inmates who are limited to law library paging due to a lockdown shall, whenever possible, have their law library access restored within 14 calendar days unless a high security risk continues to exist to prohibit physical law library access.

(e) When inmates are limited to law library paging for any reason as described in section 3123(c), law library staff must deliver the requested legal material to their cells as soon as possible, but no later than 16 calendar days from the date of the paging request.

(f) Disciplinary action for an inmate who is found to be guilty of a serious rule violation pertaining to law library resources, facilities, or staff may include a suspension of all physical law library access for up to 90 calendar days. This action does not preclude an inmate from pursuing legal research through the use of law library paging.

NOTE: Authority cited: Section 5058, Penal Code. Reference: section 5054, Penal Code; *Gilmore v. Lynch*, 319 F.Supp. 105 (N.D. Cal. 1970); *Toussaint v. McCarthy*, 801 F.2d 1080 (9th Cir. 1986); *Toussaint v. McCarthy*, USDC N.D. Cal. No. C 73-1422 SAW, First Special Report of the Monitor, August 19, 1987; *Toussaint v. Rowland*, USDC N.D. Cal. No. C 73-1422

SAW, Second Special Report of the Monitor, June 30, 1988; *Zatko v. Rowland*, 835 F.Supp. 1174 (N.D. Cal. 1993); *Lewis v. Casey*, 518 U.S. 343 (1996).

Section 3124 is adopted to read:

3124. Content of Law Libraries.

(a) Each institution shall maintain at least one law library for the use of inmates, in print and/or by means of the Electronic Law Library Delivery System with any necessary print supplements. Except for items that are out of print, the law library collection shall include, but shall not be limited to, the following current and updated legal materials or their equivalents from other publishers:

- (1) West's Annotated California Codes.
- (2) West's California Digest (latest edition).
- (3) West's California Reporter, volumes 1 to 286.
- (4) West's California Reporter, Second Series, volumes 1 to 135.
- (5) West's California Reporter, Third Series, volumes 1 to date.
- (6) Witkin and Epstein, California Criminal Law (latest edition).
- (7) Continuing Education of the Bar, California Criminal Law Procedure and Practice (latest edition).
- (8) Continuing Education of the Bar, Appeals and Writs in Criminal Cases (latest edition).
- (9) United States Code Annotated.
- (10) West's Federal Practice Digest (latest edition).
- (11) Supreme Court Reporter, volumes 70 to date.
- (12) Federal Reporter, Second Series, volumes 176 to 999.
- (13) Federal Reporter, Third Series, volumes 1 to date.
- (14) Federal Supplement, volumes 180 to 999.
- (15) Federal Supplement, Second Series, volumes 1 to date.
- (16) United States Law Week (newspaper), one year backfile.
- (17) Shepard's United States Citations.
- (18) Shepard's Federal Citations.
- (19) Shepard's California Citations.
- (20) A recognized law dictionary, such as Black's or Ballantine's (latest edition).

(b) Each institution shall also make supplemental legal materials available to inmates from an outside source. Except for items that are out of print, the supplemental legal materials shall include, but shall not be limited to, the following legal materials or their equivalents from other publishers:

- (1) Federal Supplement, volumes 1 to 179.
- (2) United States Supreme Court Reports, Lawyers' Edition, First Series, volumes 1 to 93.
- (3) California Reports, First Series.
- (4) California Reports, Second Series.

- (5) California Appellate Reports, First Series.
- (6) Federal Rules Decisions.
- (7) Corpus Juris Secundum.
- (8) California Jurisprudence (latest edition).

NOTE: Authority cited: Section 5058, Penal Code. Reference: section 5054, Penal Code; *Gilmore v. Lynch*, 319 F.Supp. 105 (N.D. Cal. 1970); *Toussaint v. McCarthy*, 801 F.2d 1080 (9th Cir. 1986); *Toussaint v. McCarthy*, USDC N.D. Cal. No. C 73-1422 SAW, First Special Report of the Monitor, August 19, 1987; *Toussaint v. Rowland*, USDC N.D. Cal. No. C 73-1422 SAW, Second Special Report of the Monitor, June 30, 1988; *Zakto v. Rowland*, 835 F.Supp. 1174 (N.D. Cal. 1993); *Lewis v. Casey*, 518 U.S. 343 (1996).

Section 3162 is amended to read:

3162. Legal Forms and Duplicating Services

(a) For purposes of this section, an indigent inmate means an inmate who has \$1.00 or less in his or her inmate trust account for 30 consecutive days.

(ab) Legal duplication services may be provided to inmates for the purposes of initiating or maintaining a court action. The printed forms required by state and federal courts, ~~which are supplied to the department by the courts~~ shall be provided made available to inmates ~~without charge~~. ~~Inmates~~ An inmate shall be required to pay for the duplication of printed forms and other written or typed materials, and for any special paper and envelopes required for mailing to the courts so long as the inmate has more than \$1.00 in his or her trust account or the inmate has attorney representation for the court action. An inmate who is indigent and is without attorney representation for the court action may receive legal duplicating services without charge subject to subsection (d). ~~An inmate who is without funds for 30 days or more after such materials and services are provided shall not be required to pay for the cost of those materials and services.~~

(c) Legal documents that are duplicated for any inmate shall be limited to the maximum number of pages needed for the filing, not to exceed 50 pages in total length, including exhibits, except when necessary to advance litigation. The inmate shall provide to designated staff a written explanation of the need for excess document length.

(d) Subject to the length requirements of subsection 3123(c), an indigent inmate who does not have attorney representation may receive duplication services without charge for the following legal documents to a court:

- (1) Petition for a writ of habeas corpus.
- (2) Traverse, Reply Pleading, and other documents in support of a petition for writ of habeas corpus, as authorized by the court or as required by statute or court rule.
- (3) Appeal from the denial of a writ of habeas corpus.
- (4) Summons and Complaint for a civil action.
- (5) Documents in support of a civil action, as authorized by the court or as required by statute or court rule.
- (6) Petition for a hearing in an appellate court.

(7) Appellant's Brief, Reply Brief, and other documents in support of an appeal, as authorized by the court or as required by statute or court rule.

(8) Petition for a writ of certiorari to the Supreme Court.

(9) Motion to proceed *in forma pauperis* (as an indigent person).

(10) Additional documents that are necessary to advance litigation. The inmate shall provide to designated staff a written explanation of the need for additional documents.

~~(be) Legal duplicating services for an inmate shall be restricted (provided such restrictions will not interfere with the inmate's access to the courts) when that inmate abuses the service to such an extent that other inmates are deprived of the services or it results in an unnecessary expense to the state.~~ The authority to place such restrictions on duplication services for any reason as described in this section shall not be delegated to staff below the level of correctional captain. The reasons for any restrictions on the services provided an inmate shall be documented on a CDC Form 128-B (Rev. 4.74), General Chrono, and placed in the inmate's central file.

NOTE: Authority cited: section 5058, Penal Code. Reference: section 5054, Penal Code.

Section 3164 is amended to read:

3164. Administrative Segregation.

(a) Inmates confined in administrative segregation for any reason will not be limited in their access to the courts.

(b) During a period of disciplinary detention, as described in Section 3330, legal resources may be limited to pencil and paper which will be provided upon request for correspondence with an attorney or the preparation of legal documents for the courts. Other legal material in the inmate's personal property may be issued to an inmate in disciplinary detention if litigation was in progress before the inmate's placement in disciplinary detention and legal due dates are imminent.

(c) Inmates who are housed in any restricted unit and who are not serving a period of disciplinary detention may possess and have access to any legal resource material available to the general population and may assist each other in their legal work to the extent compatible with institution security. For the purpose of this subsection, restricted units include reception centers, institution reception or orientation units, controlled housing and security housing units.

~~(d) If an inmate's housing restricts him or her from going to the inmate law library, arrangements will be made to deliver requested and available law library material to the inmate's quarters.~~ An inmate in a restricted housing unit may have access to an inmate law library subject to the provisions of section 3123.

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.